

Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Victory Salvage Company, Inc.

**File:** B-253006

**Date:** August 11, 1993

Lloyd Weinstein for the protester.  
Cynthia Emerson, Esq., Defense Logistics Agency, for the agency.  
Jeanne W. Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Withdrawal of item from surplus property sale, and the rejection of bids submitted with respect to it, was proper where contracting officials discovered during prebid opening inspection of property that 20 of 36 trucks identified under item did not conform to item description in the solicitation, raising question whether bidders were competing on equal basis.

### DECISION

Victory Salvage Company, Inc. protests the withdrawal of item No. 85 from an invitation for bids (IFB) covering sale No. 31-3362, for surplus parts and equipment, conducted by the Defense Logistics Agency (DLA).<sup>1</sup>

We deny the protest.

Item 85 was properly described in the IFB as: 36 aerial lift trucks, 3,000 lb. capacity, Standard Manufacturing Co., Inc., type MJ-1A, P/N 744187-50, National Stock Number (NSN): 1730-01-004-6550, poor condition, total cost: \$1,139,076, estimated total weight: 96,000 lbs. Due to a mix-up, however, at the March 3, 1993, presale inspection, item 85 included 16 of the described 3,000-pound trucks at one location and 20 munitions lift trucks with a 7,000-pound capacity--which had been mistagged as part of item 85--at

<sup>1</sup>We consider this protest under 4 C.F.R. § 21.11 (1993), as DLA, by letter dated January 13, 1987, has agreed to our considering bid protests involving its surplus property sales. See Mansfield Assocs., Inc., B-242270, Mar. 13, 1991, 91-1 CPD ¶ 284.

another location. On March 16, the day before bid opening, DLA formally withdrew item 85 from the sale due to the misidentification of the item for inspection. There having been no time to notify bidders, however, bids on that item were opened on March 17 along with bids on the other items. Victory's was the highest bid of nine received on item 85. When informed that the item had been withdrawn, and would not be awarded, Victory filed this protest.

Victory argues that the misidentification of the offered property at inspection did not provide an adequate reason to deny it award of a contract for the 16 correctly tagged and displayed trucks.

We disagree. In procurements for products or services, where an IFB does not contain specifications that reflect the agency's actual needs, the agency has a compelling reason to cancel the IFB. See Adrian Supply Co., B-246207.2; B-246207.3, Mar. 13, 1992, 92-1 CPD ¶ 282. Cancellation in this situation assures both that the government's needs will be served, and that other bidders will not be prejudiced by an award made on a basis different from that advertised. See Instrument & Controls Serv. Co., B-231934, Oct. 12, 1988, 88-2 CPD ¶ 345. We see no reason why these same principles should not apply to the surplus property sale here. See generally Sierra Forest Prods., B-245393, Jan. 2, 1992, 92-1 CPD ¶ 4 (timber sale).

Although the IFB itself was not ambiguous as to the items being sold under item 85, the misidentification of the trucks at the property inspection created an ambiguity as to what items were being sold. As a result, different bidders may have competed based on different assumptions.<sup>2</sup> For example, assuming that the 7,000-pound capacity trucks were of greater potential value than the 3,000-pound trucks (the protester does not suggest otherwise), bidders which assumed that the IFB description was correct were at a pricing disadvantage compared to bidders which, relying on the inspection, assumed that the 7,000-pound trucks would be included in item 85; this latter group of bidders generally would bid higher than the former (Victory does not indicate whether it bid with knowledge of the 7,000-pound trucks). Even among bidders aware of the 7,000-pound trucks, some may have assumed that the IFB description controlled what ultimately would be included in the sale, while others may have assumed the opposite.

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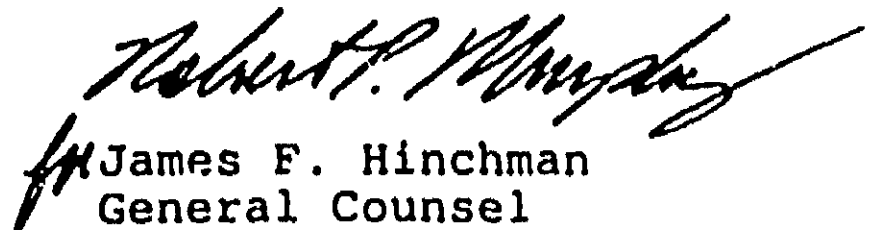
<sup>2</sup>In this regard, the record shows that, of the nine bids received, two bidders inspected the property and four did not (the remaining three did not indicate whether they inspected the item).

Since the ambiguity created by the misidentification potentially affected the unit and total prices offered by bidders, making award to Victory for the 16 3,000-pound trucks displayed at the inspection would not eliminate the possible prejudice to other bidders from the unequal competition. Rather, the agency correctly determined that the only way to assure that all bidders competed on the same basis was to eliminate the ambiguity and invite new bids on item 85. Withdrawal of the item from the sale for this purpose therefore was proper.

In support of its position that it should receive the award for the 16 3,000-pound trucks, Victory cites Defense Reutilization and Marketing Service (DRMS) regulation, DRMS-H 4160.3, Vol. I, paragraph 28a, which permits a high bidder to accept a lesser quantity of the item for sale than was advertised if the bidder so agrees. However, this provision merely permits the high bidder under a proper competition to waive a quantity discrepancy which otherwise would be a basis for the high bidder to refuse the award. It does not entitle the high bidder to award where the competition under which it became the high bidder was materially flawed, as we have found was the case here.

Victory also cites our decision B-156813, June 30, 1965, in which we held that the high bidder is entitled to award of misdescribed surplus property where the property is less valuable than that which was advertised, and the bidder waives its rights under the Guaranteed Description clause. As with the regulation discussed above, however, this decision merely recognizes that a high bidder should be permitted to waive an item misdescription that potentially is prejudicial only to itself. The decision does not address the situation where, as here, the misdescription potentially prejudiced bidders such that the result of the competition is not valid.

The protest is denied.

  
for James F. Hinchman  
General Counsel